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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,532	07/07/2003	David H. McFadden	54330/322597	9062

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JOHN S. PRATT, ESQ
KILPATRICK TOWNSEND & STOCKTON LLP
1100 PEACHTREE STREET
SUITE 2800
ATLANTA, GA 30309

EXAMINER	
SUERETH, SARAH ELIZABETH	

ART UNIT	PAPER NUMBER
3749	

NOTIFICATION DATE	DELIVERY MODE
02/02/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipefiling@kilpatricktownsend.com
jlhice@kilpatrick.foundationip.com

Office Action Summary	Application No.	Applicant(s)	
	10/614,532	MCFADDEN, DAVID H.	
	Examiner	Art Unit	
	SARAH SUERETH	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 January 2011*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *117-136* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *117-136* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/14/11*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/13/11 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 117-121,123,124,126-136,are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,327,279 to Guibert ("Guibert") (cited by applicant) in view of Day (6399930)(cited by applicant).

Guibert teaches a system and method of speed heating a food product with gas comprising the steps of providing a housing (10) defining a cooking chamber/cavity (13)

including a top wall (Figure 1), a bottom wall (Fig. 2), and opposing left and right side walls (Figure 2, side where numeral 13 is pointing and opposing side) , and providing at least three discharge plates (see Fig. 3 and holes of 14a, 14b, and 14c) for directing gas into the heating chamber at locations alongside the left and right side walls of the cavity (see Figure 3). Figure 3 shows the gas being directed in a downwardly convergent manner, and Figure 1 shows how food products (inside trays 12) can be heated by the converging gas flows.

However, Guibert does not explicitly teach the method step of cooking a food product, or that the food product is heated by direct impingement of heated air.

In regard to the recitation that the method relates to speed "cooking" a food product, the examiner does note that Guibert desired only to heat the food products contained within chamber and not "cook" them. However, the purpose for not cooking these products is so that they may be refrozen for later use (see col. 5, lines 29-37). Further, Guibert provides for the interrupted application of heat in order to preventing cooking of the food products and acknowledges that cooking would result if the heat source is not interrupted (see col. 6, line 65 through col. 7, line 17). It has been held that the elimination of a step and its function is obvious if the function is not desired. See MPEP 2144.04(II)(A). The examiner considers that it would be obvious to a person of ordinary skill in the art that were one to eliminate the heat interruption described in Guibert if one is not concerned with merely heating a food product to allow it to be refrozen. Accordingly, the person of ordinary skill would recognize that the method and system of Guibert would then be provided for cooking the food product.

Guibert, as discussed above, shows the food being heated while inside of pans or trays (12). Regarding claim 133, Guibert also does not show a microwave heat source.

Day discloses a method of using a convection oven to heat food either inside of trays/pans with indirect heating or by direct impingement with the food supported directly on a cooking rack (col. 4, lines 13-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Guibert apparatus to directly heat a food product instead of using indirect heat as taught by Day, in order to use the oven to cook pizza or other products that taste better with direct heating to brown the food products (see col. 4, lines 13-21).

Day also shows the convection oven including a microwave source (44,45,46).

4. Day discloses that it was old and well known in the art to use microwave heating in addition to convection heating in order to thaw and cook frozen food significantly faster than a pure convection oven, while maintaining the desired texture and appearance of the food by allowing for browning of the food (col. 2, lines 29-33).

5. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Guibert apparatus to include a microwave heat source as taught by Day in order to cook food significantly faster than a pure convection oven (col. 2, lines 29-33).

Regarding claims 118,121,132, 134, Guibert also discloses conduits for directing gas to and from the chamber (As1 and As2, Fig. 2) and heating means in the from of heaters (18 and 19). However, the egress opening for exhaust is shown located on either side of the oven instead of the top wall as claimed (see Figure 3). However, the oven would operate equally well with the exhaust duct in either location. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Guibert apparatus by moving the exhaust duct to above the oven as matter of obvious design choice.

Regarding claim 124,129,130 heating means in the from of heaters (18 and 19) and a blower (15) and motor (16) are provided to selectively control a flow of air through the holes in compartment (14) to propel the air at high velocity causing collision in order to rapidly heat food products placed therein (see col. 6, lines 21-56 and Fig. 2).

Regarding claims 119,131,136 there are no vertical discharge plates (see Figure 2).

Regarding claims 123,135 there are gas directing apertures at both the top of the oven and the bottom of the oven (see Fig. 3).

In regard to claims 126-128, Guibert clearly discloses that the gas directed by blower (15) is propelled at high velocity (see Abstract). To have selected a specific velocity, would be simply a matter of optimizing the prior art disclosure of high velocity and is not regarded as patentably distinct. See MPEP 2144.05 (II)(A).

6. Claims 122 and 125 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guibert in view of U.S. Patent No. 6,060,701 to McKee et al. ("McKee").

Guibert teaches all the limitations of claims 122 and 125 except for a damper means and possibly for a variable speed motor for the blower.

McKee teaches a speed cooking/heating oven in the same field of endeavor as Guibert. In McKee, it is recognized that a conduit (20) providing for the circulation of air (i.e. gas, see col. 3, lines 40-42) may include a damper to modify the air flow through the conduit. McKee also discloses the use of a variable speed blower but notes that a damper also desirably serves to provide a similar effect as a variable speed blower when a fixed speed blower is employed (see col. 5, lines 55-59).

Therefore, in regard to claims 122 and 125, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the oven of Guibert to incorporate the damper and variable speed blower as taught in McKee to desirably control the volume of air flower to provide the desired thermal energy for the cooking chamber (see McKee, col. 5, lines 50-59).

Terminal Disclaimer

The terminal disclaimer filed on 1/13/11 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent number 7,836,874 has been reviewed and is accepted. The terminal disclaimer has been recorded. The obvious type double patenting rejection is withdrawn.

Response to Arguments

7. Applicant's arguments filed 1/13/11 have been carefully considered but they are moot in view of the new ground of rejection above.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH SUERETH whose telephone number is (571)272-9061. The examiner can normally be reached on Mondays through Friday 8:00AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven McAllister, can be reached (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah Suereth/
Examiner, Art Unit 3749

/Steven B. McAllister/
Supervisory Patent Examiner, Art Unit 3749